



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17
AUGUSTA, MAINE 04333

BOARD ORDER

CALAIS LNG PROJECT CO., LLC and) APPLICATIONS FOR
CALAIS LNG PIPELINE CO., LLC)
Calais, Baring Plantation,) AIR EMISSION,
Baileyville, and Princeton) SITE LOCATION OF DEVELOPMENT,
Washington County, Maine) NATURAL RESOURCES PROTECTION,
#A-1029-71-A-N) WASTE DISCHARGE, and
#L-24843-26-A-N) WATER QUALITY CERTIFICATION
#L-24843-TG-B-N)
#L-24843-IW-C-N) FIFTH PROCEDURAL ORDER
#L-24843-L6-D-N)
#L-24843-4P-E-N)
#W-9056-5O-A-N)

On June 11, 2010, the Board Chair held a pre-hearing conference on the applications by Calais LNG Project Company LLC and Calais LNG Pipeline Company LLC (collectively Calais LNG) to construct a liquefied natural gas terminal and import facility in Calais and pipeline project in Calais, Baring Plantation, Baileyville and Princeton. The conference was held at the Hampden Town Office. The purpose of the conference was to review procedures for and organization of the hearing, consider motions to strike pre-filed direct testimony, and to address any outstanding procedural issues. This Order sets forth the Presiding Officer's rulings on matters discussed at the conference.

Persons present:

Susan Lessard, Presiding Officer
Peggy Bensinger, Assist. Attorney General
Cynthia Bertocci, Board Executive Analyst
Terry Hanson, Board Admin. Assistant
Marybeth Richardson, DEP staff
David Van Slyke, Esq. for Calais LNG
Nancy McBrady, Esq. for Calais LNG
Diane Barnes for City of Calais
Matthew Manahan, Esq. for Downeast
LNG
Harold Bailey for Roosevelt Campobello
International Park Commission
Meg Scheid for National Park Service
Sean Mahoney, Esq. for Conservation Law
Foundation (CLF)

Rebecca Boucher, Esq. for Save
Passamaquoddy Bay-US (SPB) /
Nulankeyutomonen Nkihtahkomikumon
(NN).
Todd Griset, Esq. for Industrial Energy
Consumer Group, Maine State Chamber of
Commerce
John Hanson for Maine Workers for a
Healthier Environment
Stephen Hinchman, Esq. for Citizens for
Clean and Secure Energy, Inc.
Edmond Bearor, Esq. for Professional
Mariners

1. Issues Associated with Pre-Filed Testimony and Exhibits

- A. Rebuttal Testimony. Parties were reminded that rebuttal testimony is limited to response to testimony filed by the other parties. Rebuttal testimony is not an opportunity to raise issues not addressed in the pre-filed direct testimony of another party. Parties may weave rebuttal and sur-rebuttal testimony into their oral presentations at the hearing.
- B. Evidentiary Objections. Parties were reminded that any objections should be raised at the earliest possible time.
- C. Submission of Exhibits at the Hearing. In general exhibits must accompany pre-filed testimony, except that additional exhibits may be admitted at hearing for the purpose of cross-examination or to impeach a witness.
- D. Demonstratives. Demonstratives are limited to enlargements of exhibits (maps, photographs, tables, etc.) that are already part of the record of the proceeding. Demonstratives should be clearly labeled with the exhibit number from which they are taken. New compilations of data (or other evidence) will not be permitted.

The use of PowerPoint or other presentation technologies at the hearing is generally limited to text summary of the main points of a witness' testimony and/or enlargement and projection of an exhibit included in the pre-filed testimony.

There is no requirement to submit demonstratives prior to the hearing.

- E. Testimony from the General Public. The Board encourages participation by members of the general public. The Board will receive testimony from the general public at two evening sessions, one to be held at Calais High School and the other at another location in the general vicinity of the proposed project. Persons testifying during the public testimony sessions will be asked to state their name, town of residence, affiliation if any, and indicate whether they are speaking on behalf of themselves or any group. Parties were reminded that they must present their cases in chief during the time allotted for that purpose and not during the sessions reserved to receive testimony from the general public.
- F. Record of Proceedings. Transcripts or other recordings of Board conferences, meetings or the public hearing that are made by a party for its convenience and use are not part of the Board's administrative record in this proceeding and citations to or excerpts from any such documents or recordings may not be included in filings or proceedings before the Board. If included, they will be stricken from the record. Rulings by the Presiding Officer and/or the full Board are embodied in orders or similar written documents issued by the Board. The Board will provide an official transcript of the public hearing which may be cited in post-hearing submissions to the Board.

2. Motions to Strike Pre-Filed Direct Testimony

On June 9, 2010 the Board received motions to strike the pre-filed direct testimony of certain witnesses from the following parties: Calais LNG, Industrial Energy Consumer Group/Maine State Chamber of Commerce/Maine Workers for a Healthier Environment, Downeast LNG, and Save Passamaquoddy Bay-US/NN. Concerned Citizens for Clean and Secure Energy/Professional Mariners and Waterway Users of Passamaquoddy Bay Region filed a letter dated June 9, 2010 joining in Calais LNG's motion. CLF/Sierra Club joined in the motion filed by SPB/NN. The Board received the following written responses to the motions to strike: Concerned Citizens/Professional Mariners (dated June 9, 2010), Industrial Energy Consumer Group/Maine State Chamber of Commerce/Maine Workers (dated June 10, 2010), and National Park Service (dated June 11, 2010). All parties had an opportunity to comment on the motions at the pre-hearing conference.

Discussion and Rulings on the Motions to Strike Testimony

As an initial matter, the purpose of an evidentiary hearing on a permit application is to allow the parties and the public to present all evidence relevant to the Board's decision-making process, and to educate the Board on the facts and context necessary for an informed decision based on the permitting criteria. If evidence offered is relevant, it will generally be admitted; the weight to be given the evidence will be determined by the Board in its decision. After considering the motions to strike testimony and the responses thereto, the rulings are as follows:

A. Objections to Testimony of Witnesses for Downeast LNG:

- (1) Dean Girdis. Calais LNG moved to strike the testimony of Mr. Girdis in its entirety, arguing that it focuses on project purpose and need which CLNG argues are the exclusive purview of the Federal Energy Regulatory Commission (FERC), and the testimony addresses the potential expansion of the Maritimes and Northeast Pipeline which is not part of the Calais LNG application. Consolidated intervenors Industrial Energy Consumer Group/Maine State Chamber of Commerce/Maine Workers for a Healthier Environment objected to certain portions of Mr. Girdis' testimony for similar reasons.

Ruling: Testimony regarding need for the proposed facility in the context of the alternatives analysis is permissible. However, the Board is not evaluating an application by Downeast LNG. Therefore the following portions of the testimony are stricken:

- Page 5, the middle paragraph beginning: "As will also be discussed in more detail below..."
- Page 6, the last sentence beginning: "In comparison, the DELNG project..."
- Page 9, the paragraph beginning: "CLNG stated in its DEP and FERC resource report filings..." and continuing onto page 10 through the first full

paragraph ending with “Thus, CLNG cannot fulfill its objective of supplying competitively priced LNG to New England.” Footnote 10 is also stricken.

- Page 10, the last sentence: “DELNG is such an alternative.”

- (2) Gary Napp. Calais LNG moved to strike that portion of Mr. Napp’s testimony addressing potential air quality impacts to nearby Class I areas and the visibility air analysis as irrelevant or hearsay. Calais LNG states that it was never asked by either FERC or DEP to consider St. Croix Island International Historic Site a Class I area for air modeling purposes. In brief Calais LNG argues that St. Croix Island is not a Class I area and information regarding actions required of Downeast LNG in its permitting process are irrelevant to this proceeding. Consolidated intervenors Industrial Energy Consumer Group/Maine State Chamber of Commerce/Maine Workers for a Healthier Environment objected to portions of Mr. Napp’s testimony for similar reasons.

Ruling: The testimony is allowed. While a visibility analysis is not required for a minor source permit under Chapter 115 of the Department’s rules, potential impacts to air quality regardless of air classification are relevant under the Site Law. The testimony includes information on impacts to the Class I areas in the vicinity of the proposed project including Roosevelt Campobello International Park and Moosehorn National Wildlife Refuge Baring and Edmunds units.

- (3) Terrance DeWan. Calais LNG moved to strike the testimony of Mr. DeWan and the accompanying visual assessment in its entirety because it includes an assessment of visual impacts to the Pettegrove-Livingstone House, which is privately owned. Consolidated intervenors Industrial Energy Consumer Group/Maine State Chamber of Commerce/Maine Workers for a Healthier Environment object to Mr. DeWan’s testimony for similar reasons arguing that it is irrelevant and speculative.

Ruling: The testimony is allowed. The Pettegrove-Livingstone House is on the National Register of Historic Places and potential impacts to it may be considered under Chapter 315 of the Department’s rules. Additionally, the property is within the authorized boundary of the St. Croix Island International Historic Site.

B. Objections to Testimony of CLF/Sierra Club Witnesses:

- (1) Susan Reid. Calais LNG moved to strike the testimony of Ms. Reid in its entirety. Calais LNG argues that she is a lawyer attempting to offer expert testimony, and that her testimony addresses project need and purpose which are the exclusive jurisdiction of FERC. Consolidated intervenors Industrial Energy Consumer Group/Maine State Chamber of Commerce/Maine Workers for a Healthier Environment object to Ms. Reid’s testimony for similar reasons.

Ruling: The testimony is allowed. The Amendment to the Second Procedural Order Section 2A states, “The primary determination of need for the facility is made by FERC. The Board will allow evidence regarding need as it relates to the project purpose and will consider need in the context of the alternatives analysis for wetland

impacts under the NRPA.” With respect to Ms. Reid’s credentials, the Board will consider the credentials of each witness when it evaluates the evidence.

- (2) Gregory Dexter. Calais LNG moved to strike the testimony of Mr. Dexter arguing that his testimony regarding impacts to property values is in conflict with the Amendment to the Second Procedural Order. At the conference, CLF agreed to withdraw the dollar value of the real estate and its projected decrease in value.

Ruling: Mr. Dexter is an abutter to the proposed project. Except for the paragraph at the bottom of page 3 regarding impacts to property value, the testimony is allowed.

- (3) Art MacKay. Calais LNG moved to strike the testimony of Mr. MacKay arguing that it includes testimony on the cumulative impacts of LNG development including speculation about potential impacts from other similar projects not yet approved or constructed. Calais LNG also argues that Mr. MacKay’s testimony addresses safety of LNG, and that Mr. MacKay’s testimony diverges from his areas of expertise. Downeast LNG also objects to portions of Mr. MacKay’s testimony regarding safety of LNG facilities and ships, and to testimony regarding potential impacts in Canada.

Ruling: The majority of Mr. MacKay’s testimony provides background on the geology and ecology of Passamaquoddy Bay and potential impacts to its natural resources and the existing uses of those resources from the proposed project. Mr. MacKay’s testimony regarding tanker and associated ship traffic and potential for spills is allowed in accordance with Sections 2(F) and 2(G) of the Amendment to the Second Procedural Order. However, Mr. MacKay’s 01/06/10 presentation “Welcome to Quoddy” includes two slides titled “There are Two Proposed Terminal Sites” and “30% to 100% Downtime...” with information on potential LNG facilities for which applications have not been filed with the Department. These slides are stricken. The presentation also includes three slides related to safety of LNG (“Terrorist Risks”, “Fire Risks”, “Zone of Fire Risk”); these are relevant only insofar as they address potential impacts to existing uses of the coastal wetland, but the Board will not be making a determination on the issue of the safety of LNG tankers or the LNG terminal facility itself. The references to impacts in Canada are largely in the context of identifying impacts that would be common to both the U.S. and Canada and are allowed.

- (4) Sarah Strickland. Calais LNG moved to strike portions of the testimony of Ms. Strickland that address safety of LNG. Downeast LNG objected to testimony regarding safety and to testimony regarding impacts in Canada.

Ruling: Ms. Strickland’s testimony primarily addresses potential impacts to existing uses and is allowed.

- (5) Cliff Goudey. Calais LNG moved to strike portions of the testimony of Mr. Goudey that address safety risks posed by the properties of LNG including Exhibits CLF/SC-9 and CLF/SC-10. Calais LNG also argues that Mr. Goudey is offering testimony in

areas beyond his area of expertise. Downeast LNG objects to testimony regarding safety and to testimony regarding impacts in Canada.

Ruling: Exhibits CLF/SC-9 and CLF/SC-10 are comments on the Downeast LNG FERC Draft Environmental Impact Statement. While some of the information may be applicable to the proposed Calais LNG facility, the Board is not evaluating the Downeast LNG proposal and the Board cannot assume that the information would be applicable to the application by Calais LNG which is the subject of this proceeding. Mr. Goudey's sworn statement is admitted; however, Exhibits CLF/SC-9 and CLF/SC-10 are stricken.

- (6) Margot Sackett. Downeast LNG moved to strike the testimony of Ms. Sackett arguing that it addresses impacts in Canada.

Ruling: Ms. Sackett's testimony addresses impacts to an historic site in St. Andrews. The testimony is stricken.

- (7) Steven Wildish. Calais LNG moved to strike the testimony of Mr. Wildish relating to release of LNG as a result of seismic activity or ship spills, arguing that Mr. Wildish is not qualified to provide testimony in these areas.

Ruling: The testimony is allowed. The qualifications of each witness will be considered by the Board when it evaluates the evidence presented.

- (8) Alan Brooks. Downeast LNG objects to testimony regarding the safety of LNG facilities and ships.

Ruling: Mr. Brooks' testimony primarily addresses potential impacts to the natural resources of the area and is allowed.

- (9) Lars Lund. Downeast LNG withdrew its objection at the conference.

C. Objections to Testimony of SPB/NN Witnesses:

- (1) Fishermen. Calais LNG objects to the presentation of 11 witnesses as redundant and requests that the Board strike as duplicative some of the testimony of witnesses Angus McPhail, Peter McPhail, Brent Griffin, Dale Griffin, Jeff Griffen, Timothy Griffen, Scott Emery, Mike Corthell, Justin Matthews, Charlie Stanhope, Ricky Wright.

Ruling: The testimony is allowed. The testimony from individual fishermen provides information on the nature of the fishery, existing uses of the fishery, and the extent of impact to uses of the resource.

- (2) Vaughn McIntyre. Calais LNG moved to strike the testimony of Mr. McIntyre arguing that it addresses matters beyond his expertise such as impacts to fishing, LNG

vessel size and maneuverability, and the nature of LNG. Downeast LNG also objects to any testimony regarding impacts in Canada.

Ruling: The testimony is allowed. The testimony addresses uses of Passamaquoddy Bay by both Canada and the U.S. The qualifications of each witness will be considered by the Board when it evaluates the evidence presented.

- (3) Vera Francis. Downeast LNG moved to strike the testimony of Ms. Francis arguing that it addresses the safety of LNG facilities and ships, and impacts in Canada.

Ruling: The testimony addresses uses of Passamaquoddy Bay and the protected natural resources within Maine's coastal waters. Additionally, the State's antidegradation policy allows for consideration of the historical and social significance of the use of a water body. The testimony is allowed.

- (4) Hugh Akagi. Downeast LNG moved to strike the testimony of Mr. Akagi arguing that it addresses impacts in Canada.

Ruling: The testimony addresses uses of Passamaquoddy Bay and the protected natural resources within Maine's coastal waters. Additionally, the State's antidegradation policy allows for consideration of the historical and social significance of the use of a water body. The testimony is allowed.

- (5) Maria Recchia. Downeast LNG moved to strike the testimony of Ms. Recchia arguing it addresses impacts in Canada.

Ruling: The testimony addresses impacts to fishermen using Passamaquoddy Bay and the St. Croix River. The testimony is allowed.

D. Objections to Testimony of Business Intervenors Industrial Energy Consumer Group/Maine State Chamber of Commerce/Maine Workers for a Healthier Environment:

- (1) Dana Connors. SPB/NN moved to strike the testimony of Mr. Connors arguing that he is testifying in areas beyond his area of expertise and that portions of Mr. Connors' testimony regarding the price of energy is irrelevant and speculative.

Ruling: The testimony is allowed. Testimony on the economic benefits of the proposed project and its impact on energy resources is allowed. The qualifications of each witness will be considered by the Board when it evaluates the evidence presented.

- (2) John Rohman. SPB/NN moved to strike the testimony of Mr. Rohman arguing that testimony on matters such as energy benefits to Maine businesses and reduction in carbon emissions are irrelevant, speculative, beyond Mr. Rohman's area of personal knowledge, and not related to the licensing criteria.

Ruling: The testimony is allowed. Testimony on the economic benefits of the proposed project and its impact on energy resources is allowed. The qualifications of each witness will be considered by the Board when it evaluates the evidence presented.

- (3) Keith Van Scotter. SPB/NN moved to strike the testimony of Mr. Van Scotter arguing that the testimony regarding energy costs is speculative and that Mr. Van Scotter is not qualified to comment on environmental impacts of the proposed project.

Ruling: The testimony is allowed. Testimony on the economic benefits of the proposed project is allowed. The qualifications of each witness will be considered by the Board when it evaluates the evidence presented.

- (4) Bill Brown and Ray McMullin. SPB/NN moved to strike the testimony arguing that neither is qualified to testify on energy prices and that testimony regarding benefits to Maine energy consumers are speculative and impermissible.

Ruling: The testimony is allowed. Testimony on the economic benefits of the proposed project is allowed. The qualifications of each witness will be considered by the Board when it evaluates the evidence presented.

- (5) Michael Aube. SPB/NN moved to strike the testimony of Mr. Aube arguing that the testimony on environmental benefits of the project is unsupported.

Ruling: The testimony is allowed. Parties may cross-examine the witness on the basis for his testimony.

- (6) Linda Pagels-Wentworth and Phil Polk. SPB/NN moved to strike the testimony arguing that testimony regarding the potential of the project to benefit Domtar is without personal knowledge and speculative.

Ruling: The testimony is allowed. Parties may cross-examine the witnesses on the basis for their testimony.

- (7) Calvin Murphy. SPB/NN moved to strike the testimony of Mr. Murphy arguing that testimony regarding lack of employment opportunities in Washington County is not relevant to the licensing criteria.

Ruling: The testimony is allowed. Testimony on the economic benefits of the proposed project is allowed.

- (8) Paul Mercer. SPB/NN moved to strike the testimony of Mr. Mercer arguing that it is generic in nature and not relevant to the proposed project.

Ruling: The testimony contains general information on LNG facilities and is allowed.

E. Objections to Testimony of Witness for City of Calais:

- (1) Joseph Cassidy. SPB/NN moved to strike the testimony of Mr. Cassidy arguing that the testimony regarding economic growth as a result of the proposed project and improvements to the health of families and towns in the area is speculative.

Ruling: The testimony is allowed. Testimony on the economic benefits of the proposed project is allowed.

F. Objections to Testimony of Witnesses for Concerned Citizens/Professional Mariners:

- (1) Kenneth Thomas. SPB/NN moved to strike the testimony of Mr. Thomas arguing that the witness does not have qualifications to testify on impacts to tourism.

Ruling: The testimony is allowed. The qualifications of each witness will be considered by the Board when it evaluates the evidence presented.

- (2) Gerald Morrison, James Matthews and Douglas Lord. SPB/NN moved to strike those portions of the testimony pertaining to safety and security of LNG tankers arguing that it does not comply with the ruling in the Second Procedural Order; otherwise SPB/NN argues that if this testimony is allowed other parties should be permitted to provide such testimony.

Ruling: The objection to the testimony was withdrawn at the conference and the testimony will remain in the record. This evidence is relevant as it pertains to impacts to existing uses and as background information on LNG; however, the Board will not be making a determination on the issue of the safety of LNG tankers or the LNG terminal facility itself

- (3) Christopher Gardner. SPB/NN moved to strike to Mr. Gardner's statements regarding safety and security and argues that the testimony should be limited to navigational risks, environmental impacts and the effects of a spill as allowed by the Second Procedural Order.

Ruling: The testimony is allowed. The witness briefly states his belief that the waterway is navigable. However, parties are advised that the U.S. Coast Guard will conduct a waterway suitability analysis. The Board will not independently assess waterway suitability or ultimately decide whether LNG tankers can safely transit the waterway to the proposed facility.

- (4) Yvan Labbe and Tony Brinkley. SPB/NN moved to strike the testimony arguing that the witnesses are not experts on erosion, LNG, tug assisted LNG tanker transits, aesthetics or threats to St. Croix International Monument.

Ruling: The testimony is allowed. The qualifications of each witness will be considered by the Board when it evaluates the evidence presented.

3. Organization of the Hearing

- A. Commencement of Hearing. The hearing will begin at 8:30 am on Monday, July 19th. It will continue at 8:00 am on each of the following days. The Presiding Officer will hold a pre-hearing conference with the parties at 8:00 am on Monday, July 19th.
- B. Opening Statements. Each party (including each consolidated party) will have up to 15 minutes for an opening statement.
- C. Summary of Pre-Filed Testimony and Cross-Examination. Parties are reminded that Board members will have read the pre-filed direct and rebuttal testimony; therefore, it is not necessary to reiterate the testimony. Rather parties should limit presentations to a concise summary of the major points of testimony. In instances where there are a large number of persons on a witness panel, a party may elect to have one or two witnesses summarize their individual testimony with the remainder of the witnesses available for cross-examination. Given that testimony has been pre-filed, it is most beneficial to focus hearing time on cross-examination of witnesses and questions from Board members and staff.
- D. Sequence of Presentation. The general sequence of presentation at the hearing will be: applicant, proponents, Downeast LNG, opponents, and governmental agencies. A detailed schedule will be developed following submission of pre-filed rebuttal testimony.
- E. Closing Statements. At this time the Board does not anticipate closing statements unless there is sufficient time at the close of the hearing and there is consensus that such statements would be useful. Parties have the opportunity to file post-hearing briefs.
- F. Evening Sessions for Public Testimony. As noted above, the Board will hold two evening sessions to receive testimony from the general public. Parties are asked to help ensure that their supporters respect the right of persons with differing views to testify at the hearing. Signs or applause in support of, or opposition to, the witnesses or the proposed project will not be allowed.

4. Hearing Location / Logistics.

- A. Location. The public hearing will be held at Calais High School. A diagram of the room setup was distributed. Parties should contact Terry Hanson if they have any questions or requests. The school will be open at 7:00 am each morning. The school will also be available for setup on Sunday, July 18th at a time to be determined. Parties should contact Terry Hanson to coordinate access on Sunday.

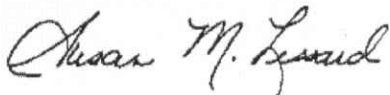
The school will provide 4 classrooms for use of the parties to store materials and meet with their witnesses: one for the applicant, one for proponents, one for opponents, and one for parties who are neither for nor against the proposed project.

The Tuesday, July 20th evening session for public testimony will be held at Calais High School. A second evening session for public testimony will be held on Thursday, July 22 at a location to be determined.

- B. Equipment. The Board will provide a projection screen and sound. Parties must provide their own projectors, extension cords, etc. Calais LNG stated that it will provide an Elmo which may be used by all parties. Parties are encouraged to coordinate the use of any such equipment with one another.
- C. Meals. The precise timing of lunch and dinner breaks will be dictated by the progress of the hearing itself, with breaks generally occurring at logical points in presentation of testimony and cross-examination of witnesses. Lunch breaks will generally be approximately 30 minutes in length, so parties should plan accordingly.
5. **Site Visit**. The Board received suggestions from the following parties: Calais LNG, Professional Mariners, SPB/NN, CLF/Sierra Club, the National Park Service and Roosevelt Campobello International Park Commission. The Board anticipates that it will conduct a land-based site visit on Sunday, July 18th. Weather permitting the Board will view the proposed project site, transit route and other relevant areas by boat the afternoon of July 20th or 21st. Details of the site visit will be shared with parties in advance. Board members will be accompanied by counsel, staff and the Marine Patrol.
6. **Appeals**. Any appeal to the full Board of the rulings set forth in this order on the motions to strike testimony must be filed by Wednesday, June 16 at noon and will be considered by the full Board at its regular meeting on Thursday, June 17, 2010. An appeal of this order to the full Board is not necessary to preserve objections previously documented in filings with the Board.

DONE AND DATED AT AUGUSTA, MAINE THIS 15th DAY OF JUNE, 2010.

BOARD OF ENVIRONMENTAL PROTECTION



BY:

Susan M. Lessard, Chair